

HOUSE BILL 1038

I1

(1lr1567)

ENROLLED BILL

— *Economic Matters/Finance* —

Introduced by **Delegates Olszewski and Kach**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law – Residential Mortgage Loans – Escrow Amounts**

3 FOR the purpose of prohibiting certain lenders ~~and lending institutions~~, credit
4 grantors, and servicers of loans from including, for a certain period of time,
5 certain increases in the amount of certain escrow payments in calculating the
6 amount of interest or any fee due under certain residential mortgage loans
7 under certain circumstances; providing for the construction of certain provisions
8 of this Act; authorizing a lender, a credit grantor, or a servicer of a loan to
9 charge interest to a borrower on certain funds under certain circumstances;
10 defining a certain term; and generally relating to residential mortgage loans and
11 escrow amounts.

12 BY repealing and reenacting, without amendments,

13 Article – Commercial Law

14 Section 12–109 and 12–109.2(c)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 Annotated Code of Maryland
2 (2005 Replacement Volume and 2010 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Commercial Law
5 Section 12–109.1 and 12–1026
6 Annotated Code of Maryland
7 (2005 Replacement Volume and 2010 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article – Commercial Law**

11 12–109.

12 (a) (1) In this section the following words have the meanings indicated.

13 (2) “Lending institution” means a bank, savings bank, or savings and
14 loan association doing business in Maryland.

15 (3) “Escrow account” means an expense or escrow account which tends
16 to protect the security of a loan by the accumulation of funds for the payment of taxes,
17 insurance premiums, or other expenses.

18 (b) (1) After May 31, 1974, a lending institution which lends money
19 secured by a first mortgage or first deed of trust on any interest in residential real
20 property and creates or is the assignee of an escrow account in connection with that
21 loan shall pay interest to the borrower on the funds in the escrow account at the
22 greater of:

23 (i) A rate of 3 percent per annum simple interest; or

24 (ii) The rate of interest regularly paid by the lending institution
25 on regular passbook savings accounts.

26 (2) Interest on these funds shall be:

27 (i) Computed on the average monthly balance in the escrow
28 account; and

29 (ii) Paid annually to the borrower by crediting the escrow
30 account with the amount of interest due.

31 (3) The lending institution shall annually provide the borrower with a
32 statement of the escrow balance.

1 (c) The provisions of this section do not apply to a lending institution which
2 provides for the payment of taxes, insurance, or other expenses under the direct
3 reduction method by which these expenses, when paid by the lender, are added to the
4 outstanding principal balance of the loan.

5 (d) This section does not apply if the loan is purchased by an out-of-state
6 lender through the Federal National Mortgage Association, the Government National
7 Mortgage Association, or the Federal Home Loan Mortgage Corporation and the
8 out-of-state lender as a condition of purchase elects to service the loan. However, this
9 section shall apply if the out-of-state lender sells the loan to a Maryland lender or
10 places the loan with a Maryland lender for servicing.

11 12-109.1.

12 (a) The provisions of this section do not apply to escrow accounts maintained
13 in connection with loans described in § 12-103(e)(1) of this subtitle.

14 (b) Except in a foreclosure, release, or as provided in subsection (c) of this
15 section, funds in any escrow account for use in paying taxes, insurance premiums and
16 ground rents may not be used to:

17 (1) Reduce the principal; or

18 (2) Pay interest or other loan charges.

19 (c) If there is periodically a balance in the escrow account that exceeds the
20 amount provided for in the note, loan agreement, or security instrument, the borrower
21 shall be given at least annually the option of:

22 (1) Receiving a refund of the excess amount;

23 (2) Applying the excess amount to the payment of principal and
24 interest; or

25 (3) Leaving the excess amount in the escrow account.

26 (d) A refund of any excess amount shall be made:

27 (1) Within 60 days after the receipt by the lender of the borrower's
28 request for a refund; or

29 (2) If the borrower has not notified the lender of the option chosen by
30 the borrower under subsection (c) of this section, within 60 days after the date the
31 lender mailed notice of the excess amount to the borrower.

32 (E) (1) ~~IF~~ **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IF,**
33 **AFTER RECALCULATING THE AMOUNT THAT IS REQUIRED TO BE MAINTAINED IN**

1 ESCROW UNDER A FIRST MORTGAGE OR FIRST DEED OF TRUST ON RESIDENTIAL
2 REAL PROPERTY, A LENDER OR A SERVICER OF A LOAN DETERMINES THAT THE
3 AMOUNT THAT A BORROWER IS REQUIRED TO PAY MUST INCREASE, THE
4 LENDER OR SERVICER MAY NOT INCLUDE, FOR A 1-YEAR PERIOD AFTER THE
5 DETERMINATION IS MADE, THE AMOUNT OF THE INCREASE IN ESCROW
6 PAYMENTS IN ANY CALCULATION OF THE AMOUNT OF INTEREST OR ANY FEE
7 DUE UNDER THE LOAN.

8 (2) THIS SUBSECTION MAY NOT BE CONSTRUED TO LIMIT THE
9 ABILITY OF A LENDER OR A SERVICER OF A LOAN TO IMPOSE A LATE FEE FOR
10 ANY ESCROW PAYMENT THAT IS DUE AND NOT TIMELY PAID.

11 (3) (I) IN THIS PARAGRAPH, "OTHER EXPENSES" DOES NOT
12 INCLUDE MONEY REQUIRED BY A LENDER OR A SERVICER OF A LOAN FOR AN
13 ESCROW ACCOUNT CUSHION AS PERMITTED BY THE FEDERAL REAL ESTATE
14 SETTLEMENT PROCEDURES ACT.

15 (II) A LENDER OR A SERVICER OF A LOAN MAY CHARGE
16 INTEREST TO A BORROWER ON THE AMOUNT OF FUNDS THE LENDER OR
17 SERVICER ADVANCES TO PAY TAXES, INSURANCE PREMIUMS, OR OTHER
18 EXPENSES OWED BY THE BORROWER IN ORDER TO PROTECT THE SECURITY OF
19 THE LOAN.

20 (III) INTEREST MAY BE CHARGED BY A LENDER OR A
21 SERVICER OF A LOAN UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH ONLY IF:

22 1. THE LENDER OR SERVICER ADVANCES ITS OWN
23 FUNDS BECAUSE FUNDS OF THE BORROWER WERE NOT AVAILABLE TO PAY THE
24 TAXES, INSURANCE PREMIUMS, OR OTHER EXPENSES OWED BY THE BORROWER;

25 2. THE NEED FOR THE ADVANCE WAS NOT CAUSED
26 BY AN ERROR OF THE LENDER OR SERVICER IN SERVICING THE LOAN;

27 3. THE LENDER OR SERVICER PROVIDES NOTICE TO
28 THE BORROWER THAT THE ADVANCE WAS MADE AND THAT INTEREST WILL BE
29 CHARGED ON THE ADVANCE;

30 4. INTEREST DOES NOT BEGIN TO ACCRUE UNTIL 60
31 DAYS AFTER NOTICE HAS BEEN PROVIDED TO THE BORROWER IN ACCORDANCE
32 WITH ITEM 3 OF THIS SUBPARAGRAPH;

33 5. INTEREST IS CHARGED ONLY ON THE AMOUNT OF
34 FUNDS ACTUALLY ADVANCED BY THE LENDER OR SERVICER AFTER THE LENDER
35 OR SERVICER HAS USED ALL AVAILABLE FUNDS OF THE BORROWER TO PAY

1 TAXES, INSURANCE PREMIUMS, OR OTHER EXPENSES OWED BY THE BORROWER;
2 AND

3 6. THE BORROWER IS PERMITTED TO REPAY THE
4 ADVANCE AS PERMITTED BY THE FEDERAL REAL ESTATE SETTLEMENT
5 PROCEDURES ACT.

6 12-109.2.

7 (c) A lender may not impose a collection fee or service charge on the
8 maintenance of an escrow account on a first mortgage.

9 12-1026.

10 (a) (1) In this section the following words have the meanings indicated.

11 (2) "Lending institution" means a bank, savings bank, or savings and
12 loan association doing business in Maryland.

13 (3) "Escrow account" means an expense or escrow account which tends
14 to protect the security of a loan by the accumulation of funds for the payment of taxes,
15 insurance premiums, or other expenses.

16 (b) (1) A lending institution that makes a loan to a consumer borrower
17 secured by a first mortgage or first deed of trust on residential real property and
18 creates or is the assignee of an escrow account in connection with that loan shall pay
19 interest to the consumer borrower on the funds in the escrow account at the greater of:

20 (i) A rate of 3 percent per annum simple interest; or

21 (ii) The rate of interest regularly paid by the lending institution
22 on regular passbook savings accounts.

23 (2) Interest on these funds shall be:

24 (i) Computed on the average monthly balance in the escrow
25 account; and

26 (ii) Paid annually to the borrower by crediting the escrow
27 account with the amount of interest due.

28 (3) The lending institution shall annually provide the consumer
29 borrower with a statement of the escrow balance.

30 (4) The provisions of this subsection do not apply to a lending
31 institution that provides for the payment of taxes, insurance, or other expenses under

1 the direct reduction method by which these expenses, when paid by the lending
2 institution, are added to the outstanding principal balance of the loan.

3 (5) (i) This subsection does not apply if the loan:

4 1. Is purchased by an out-of-state lender through the
5 Federal National Mortgage Association, the Government National Mortgage
6 Association, or the Federal Home Loan Mortgage Corporation; and

7 2. The out-of-state lender elects to service the loan as a
8 condition of purchase.

9 (ii) Notwithstanding subparagraph (i) of this paragraph, this
10 subsection shall apply if the out-of-state lender:

11 1. Sells the loan to a Maryland lender; or

12 2. Places the loan with a Maryland lender for servicing.

13 (c) (1) Except upon foreclosure, release, or as provided in paragraph (2) of
14 this subsection, funds in any escrow account maintained by a credit grantor on behalf
15 of a consumer borrower for use in paying taxes, insurance premiums, and ground rents
16 may not be used:

17 (i) To reduce the principal; or

18 (ii) To pay interest or other loan charges.

19 (2) If there is periodically a balance in the escrow account maintained
20 by a credit grantor on behalf of a consumer borrower which exceeds the amount stated
21 in the agreement, note, or other evidence of the loan, the consumer borrower shall be
22 given at least annually the option of:

23 (i) Receiving a refund of the excess amount;

24 (ii) Applying the excess amount to the payment of principal and
25 interest; or

26 (iii) Leaving the excess amount in the escrow account.

27 (3) A refund of any excess amount shall be made:

28 (i) Within 60 days after the receipt by the credit grantor of the
29 consumer borrower's request for a refund; or

1 (ii) If the consumer borrower has not notified the credit grantor
2 of the option chosen by the consumer borrower, within 60 days after the date the credit
3 grantor mailed notice of an excess amount.

4 (4) (I) ~~IF~~ SUBJECT TO SUBPARAGRAPH (III) OF THIS
5 PARAGRAPH, IF, AFTER RECALCULATING THE AMOUNT THAT IS REQUIRED TO BE
6 MAINTAINED IN ESCROW UNDER A FIRST MORTGAGE OR FIRST DEED OF TRUST
7 ON RESIDENTIAL REAL PROPERTY, A ~~LENDING INSTITUTION~~ CREDIT GRANTOR
8 OR A SERVICER OF A LOAN DETERMINES THAT THE AMOUNT THAT A CONSUMER
9 BORROWER IS REQUIRED TO PAY MUST INCREASE, THE ~~LENDING INSTITUTION~~
10 ~~LENDER~~ CREDIT GRANTOR OR SERVICER MAY NOT INCLUDE, FOR A 1-YEAR
11 PERIOD AFTER THE DETERMINATION IS MADE, THE AMOUNT OF THE INCREASE
12 IN ESCROW PAYMENTS IN ANY CALCULATION OF THE AMOUNT OF INTEREST OR
13 ANY FEE DUE UNDER THE LOAN.

14 (II) THIS PARAGRAPH MAY NOT BE CONSTRUED TO LIMIT
15 THE ABILITY OF A ~~LENDING INSTITUTION~~ CREDIT GRANTOR OR A SERVICER OF A
16 LOAN TO IMPOSE A LATE FEE FOR ANY ESCROW PAYMENT THAT IS DUE AND NOT
17 TIMELY PAID.

18 (III) 1. IN THIS SUBPARAGRAPH, "OTHER EXPENSES"
19 DOES NOT INCLUDE MONEY REQUIRED BY A CREDIT GRANTOR OR A SERVICER OF
20 A LOAN FOR AN ESCROW ACCOUNT CUSHION AS PERMITTED BY THE FEDERAL
21 REAL ESTATE SETTLEMENT PROCEDURES ACT.

22 2. A CREDIT GRANTOR OR A SERVICER OF A LOAN
23 MAY CHARGE INTEREST TO A CONSUMER BORROWER ON THE AMOUNT OF FUNDS
24 THE CREDIT GRANTOR OR SERVICER ADVANCES TO PAY TAXES, INSURANCE
25 PREMIUMS, OR OTHER EXPENSES OWED BY THE CONSUMER BORROWER IN
26 ORDER TO PROTECT THE SECURITY OF THE LOAN.

27 3. INTEREST MAY BE CHARGED BY A CREDIT
28 GRANTOR OR A SERVICER OF A LOAN UNDER SUBSUBPARAGRAPH 2 OF THIS
29 SUBPARAGRAPH ONLY IF:

30 A. THE CREDIT GRANTOR OR SERVICER ADVANCES
31 ITS OWN FUNDS BECAUSE FUNDS OF THE CONSUMER BORROWER WERE NOT
32 AVAILABLE TO PAY THE TAXES, INSURANCE PREMIUMS, OR OTHER EXPENSES
33 OWED BY THE CONSUMER BORROWER;

34 B. THE NEED FOR THE ADVANCE WAS NOT CAUSED
35 BY AN ERROR OF THE CREDIT GRANTOR OR SERVICER IN SERVICING THE LOAN;

1 C. THE CREDIT GRANTOR OR SERVICER PROVIDES
 2 NOTICE TO THE CONSUMER BORROWER THAT THE ADVANCE WAS MADE AND
 3 THAT INTEREST WILL BE CHARGED ON THE ADVANCE;

4 D. INTEREST DOES NOT BEGIN TO ACCRUE UNTIL 60
 5 DAYS AFTER NOTICE HAS BEEN PROVIDED TO THE CONSUMER BORROWER IN
 6 ACCORDANCE WITH ITEM C OF THIS SUBSUBPARAGRAPH;

7 E. INTEREST IS CHARGED ONLY ON THE AMOUNT OF
 8 FUNDS ACTUALLY ADVANCED BY THE CREDIT GRANTOR OR SERVICER AFTER
 9 THE CREDIT GRANTOR OR SERVICER HAS USED ALL AVAILABLE FUNDS OF THE
 10 CONSUMER BORROWER TO PAY TAXES, INSURANCE PREMIUMS, OR OTHER
 11 EXPENSES OWED BY THE CONSUMER BORROWER; AND

12 F. THE CONSUMER BORROWER IS PERMITTED TO
 13 REPAY THE ADVANCE AS PERMITTED BY THE FEDERAL REAL ESTATE
 14 SETTLEMENT PROCEDURES ACT.

15 (d) (1) Funds in any escrow account shall be kept separate from and may
 16 not be commingled with the funds of the credit grantor.

17 (2) A credit grantor may place escrow funds received in connection
 18 with more than one loan into a single escrow account.

19 (3) In the event of the bankruptcy of the credit grantor, any escrow
 20 funds placed in any escrow account may not be considered to be part of the bankrupt
 21 estate of the credit grantor.

22 (e) A credit grantor may not impose a collection fee or service charge on the
 23 maintenance of an escrow account on a first mortgage or first deed of trust.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 25 October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.